

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

OLC 75-2944

24 NOV 1975

Honorable Nelson A. Rockefeller
President of the Senate
Washington, D. C. 20510

Dear Mr. President:

This letter transmits for the consideration of the Congress a draft bill to amend the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended.

Title I of the proposed legislation improves the financial soundness of the CIA retirement system by adopting the same funding procedures approved by the 91st Congress for the Civil Service and Foreign Service systems and as proposed to the 94th Congress for the Foreign Service system.

Title II conforms the CIA Retirement Act to changes approved in Public Laws 91-658, 92-243, 93-260, 93-273, and 93-474 for the Civil Service retirement system. Under these changes a widower of a female participant is accorded the same treatment as a widow of a deceased male participant; survivorship protection is extended to a spouse acquired after retirement under certain conditions; the definition of a child entitled to an annuity is expanded; the entitlement for a surviving spouse annuity is expanded; a reduced annuity to provide for a surviving spouse is restored to a full annuity if the annuitant is predeceased and does not remarry; certain annuities granted prior to October 20, 1969 are increased and a minimum annuity tied to Social Security levels is established; and retirement credit is provided for periods of separation covered by compensation for work injuries. Title II also conforms the CIA Retirement Act to changes approved in Public Laws 89-554, 86-415, and 87-233 for the Civil Service retirement system. Under these changes recovery of payments may be waived in certain instances and credit as military service is given for certain service in the Public Health Service or the Coast and Geodetic Survey (now functionally within the National Oceanic and Atmospheric Administration). Further, Title II conforms the Act to Public Law 89-373 which revises the requirement to designate or change a beneficiary.

A number of the key features in the CIA Retirement Act are based upon Civil Service retirement provisions. Enactment of the proposed legislation will assure that the CIA retirement system remains in line



with the Civil Service system in important areas concerning financial soundness and survivorship annuities. Title II also proposes an administrative procedure to facilitate the comparable adoption by the Agency system of future changes in the Civil Service system which are substantially identical to provisions in the Agency system. This is based on a similar proposal for the Foreign Service which was submitted to the 94th Congress.

We would appreciate early and favorable consideration of the proposed bill. The Office of Management and Budget has advised that there is no objection to presenting the proposed bill to the Congress from the standpoint of the Administration's program.

Sincerely,

~~SIGNED~~

W. E. Colby
Director

Enclosures

Distribution:

- Orig. - Addressee w/encl.
- 1 - DCI w/encl.
- 1 - DDCI w/encl.
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- 1 - OLC/Chrono wo/encl.

OLC/PLC/dlv (14 Nov. 1975)

STAT

OPRB/Division
File

OLC 75-2944/a

Honorable Carl Albert
Speaker of the House of Representatives
Washington, D. C. 20515

24 NOV 1975

Dear Mr. Speaker:

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Approved For Release 2005/08/16 : CIA-RDP77M00144R000600100013-4

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A BILL

To amend the Central Intelligence Agency Retirement Act of 1964 for
Certain Employees, as amended, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of
2 the United States of America in Congress assembled,

3 TITLE I -- RETIREMENT FINANCING

4 SEC. 101. Section 111 of the Central Intelligence Agency
5 Retirement Act of 1964 for Certain Employees, as amended,
6 (78 Stat. 1043; 50 U.S.C. 403 note) is amended--

7 (a) by striking out "and" at the end of paragraph (2);

8 (b) by striking out the period at the end of paragraph (3)

9 and inserting a semicolon in lieu thereof; and

10 (c) by adding the following new paragraphs (4), (5), and (6):

11 "(4) 'Fund balance' means the sum of--

12 "(a) the investments of the fund calculated at
13 par value; and

14 "(b) the cash balance of the fund on the books
15 of the Treasury;

16 "(5) 'Unfunded liability' means the estimated excess of
17 the present value of all benefits payable from the fund to
18 participants and former participants, subject to this Act,
19 and to their survivors, over the sum of --

1 "(a) the present value of deductions to be
2 withheld from the future basic salary of participants
3 currently subject to this Act and of future Agency
4 contributions to be made in their behalf; plus

5 "(b) the present value of Government payments
6 to the fund under section 261 (b) and (c) of this Act;
7 plus

8 "(c) the fund balance as of the date the unfunded
9 liability is determined; and

10 "(6) 'Normal cost' means the level percentage of
11 payroll required to be deposited in the fund to meet the cost
12 of benefits payable under the System (computed in accordance
13 with generally accepted actuarial practice on an entry-age
14 basis) less the value of retirement benefits earned under
15 another retirement system for Government employees and less
16 the cost of credit allowed for military service."

17 SEC. 102. Section 261 of the Central Intelligence Agency
18 Retirement Act of 1964 for Certain Employees, as amended, (78 Stat.
19 1043; 50 U.S.C. 403 note) is amended by inserting "(a)" after "261."
20 and by adding the following new paragraphs (b), (c), and (d):

21 "(b) Any statute which authorizes--

1 "(1) new or liberalized benefits payable from
2 the fund, including annuity increases other than under
3 section 291 of this Act;

4 "(2) extension of the coverage of this Act to new
5 groups of employees; or

6 "(3) increases in salary on which benefits are
7 computed is deemed to authorize appropriations to the
8 fund to finance the unfunded liability created by that
9 statute in thirty equal annual installments with interest
10 computed at the rate used in the then most recent
11 valuation of the System and with the first payment
12 thereof due as of the end of the fiscal year in which
13 each new or liberalized benefit, extension of coverage,
14 or increase in salary is effective.

15 "(c) At the end of each fiscal year, effective with
16 Fiscal Year 1976, the Director shall notify the
17 Secretary of the Treasury of the amount of the normal
18 cost for that year which was not met by contributions
19 under section 211(a). Before closing the account for
20 that year, the Secretary of the Treasury shall credit
21 such amount to the fund as a Government contribution

1 out of any money in the Treasury of the United States
2 not otherwise appropriated. The Secretary shall
3 report to the President and to the Congress the sums
4 credited to the fund under this section.

5 "(d) At the end of each fiscal year, the Director
6 shall notify the Secretary of the Treasury of the
7 amount equivalent to (1) interest on the unfunded
8 liability computed for that year at the interest rate
9 used in the then most recent valuation of the System,
10 and (2) that portion of disbursement for annuities for
11 that year which the Director estimates is attributable
12 to credit allowed for military service. Before closing
13 the accounts for each fiscal year, the Secretary shall
14 credit to the fund, as a Government contribution, out
15 of any money in the Treasury of the United States not
16 otherwise appropriated, the following percentages of
17 such amounts: 60 percent for 1976; 70 percent for 1977;
18 80 percent for 1978; 90 percent for 1979; and 100 percent
19 for 1980 and for each fiscal year thereafter."

20 TITLE II -- RETIREMENT ACT AMENDMENTS

21 SEC. 201. Section 204 of the Central Intelligence Agency

1 Retirement Act of 1964 for Certain Employees, as amended,
2 (78 Stat. 1043; 50 U.S.C. 403 note) is amended--

3 (a) by striking "dependent" in subsection (a);

4 (b) by striking "Dependent widower" and inserting
5 "Widower" in lieu thereof in subsection (b)(2);

6 (c) by inserting a period before first comma and striking
7 the remainder of the sentence in subsection (b)(2);

8 (d) by inserting before the comma in subsection (b)(3)(i)
9 the words: "or a child who lived with and for whom a petition for
10 adoption was filed by a participant and who is adopted by the
11 surviving spouse after the participant's death."; and

12 (e) by striking out "two years" wherever it appears and
13 inserting in lieu thereof "one year."

14 SEC. 202. Section 221(b) of the Central Intelligence Agency
15 Retirement Act of 1964 for Certain Employees, as amended, (78
16 Stat. 1043; 50 U.S.C. 403 note) is amended to read as follows:

17 "(b)(1) If a participant dies after having retired and
18 is survived by a spouse to whom he or she was married at
19 the time of retirement, or by a widow or widower whom he
20 or she married after retirement, the spouse, widow, or
21 widower is entitled to an annuity equal to 55 percent of the

1 amount of the participant's annuity computed as prescribed
2 in paragraph (a) of this section, up to the full amount of
3 such annuity specified by the participant as the base for
4 such survivor benefits at the time of retirement. The annuity
5 of the participant shall be reduced by 2 1/2 per centum of any
6 amount up to \$3,600 specified by the participant as the base
7 for such survivor benefit plus 10 per centum of any amount
8 over \$3,600 so specified.

9 "(2) If an annuitant dies after having elected a reduced
10 annuity provided in paragraph (2) of section 221(f) the
11 surviving widow or widower is entitled to an annuity computed
12 as prescribed in paragraph (1) of this subsection.

13 "(3) A spouse acquired after retirement is entitled to a
14 survivor annuity under this subsection only upon electing
15 this annuity instead of any other survivor benefit to which he
16 or she may be entitled under this or another retirement system
17 for Government employees. The annuity of the spouse, widow,
18 or widower under this subsection commences on the day after
19 the annuitant dies. This annuity and the right thereto
20 terminate on the last day of the month before the spouse, widow,
21 or widower--

1 "(A) dies; or
2 "(B) remarries before becoming 60 years of age."

3 "(4) An annuity which is reduced under this subsection
4 shall, for each full month during which an annuitant is not
5 married, be recomputed and paid as if the annuity had not
6 been so reduced. Upon remarriage of the annuitant, the
7 annuity shall be reduced by the same percentage reductions
8 which were in effect at the time of retirement."

9 SEC. 203. Section 221(f) of the Central Intelligence Agency
10 Retirement Act of 1964 for Certain Employees, as amended, (78 Stat.
11 1043; 50 U.S.C. 403 note) is amended--

12 (a) by inserting "(1)" immediately after "(f)"; and
13 (b) by adding at the end thereof the following new paragraph (2)

14 "(2) A participant, who is unmarried at the time of
15 retiring and who later marries, may irrevocably elect, in a
16 signed writing received in the Agency within one year after
17 the marriage, a reduced annuity as provided in section 221(b).
18 The reduced annuity is effective the first day of the month
19 after the election is received. The election voids prospectively
20 any election previously made under the provisions of paragraph
21 (1) of this subsection."

1 SEC. 204. Section 221 of the Central Intelligence Agency
2 Retirement Act of 1964 for Certain Employees, as amended, (78 Stat.
3 1043; 50 U.S.C. 403 note) is amended by adding at the end thereof
4 the following new subsection:

5 "(1) (1) Notwithstanding any other provision of this
6 section, the monthly rate of annuity payable under subsection
7 (a) of this section, shall not be less than the smallest
8 primary insurance amount, including any cost-of-living
9 increase added to that amount, authorized to be paid from
10 time to time under title II of the Social Security Act.

11 "(2) Notwithstanding any other provision of this
12 section, other than this subsection, the monthly rate of
13 annuity payable under subsection (a) of this section to a
14 surviving child shall not be less than the smallest primary
15 insurance amount, including any cost-of-living increase added
16 to that amount, authorized to be paid from time to time under
17 title II of the Social Security Act, or three times such primary
18 insurance amount divided by the number of surviving children
19 entitled to an annuity, whichever is the lesser.

20 "(3) The provisions of this subsection shall not apply
21 to an annuitant or to a survivor who is or becomes entitled

1 to receive from the United States an annuity or retired pay
2 under any other civilian or military retirement system,
3 benefits under title II of the Social Security Act, a pension,
4 veterans' compensation, or any other periodic payment of a
5 similar nature, when the monthly rate thereof, is equal to or
6 greater than the smallest primary insurance amount, including
7 any cost-of-living increase added to that amount, authorized
8 to be paid from time to time under title II of the Social
9 Security Act."

10 SEC. 205. Section 232(b) of the Central Intelligence Agency
11 Retirement Act of 1964 for Certain Employees, as amended, (78 Stat.
12 1043; 50 U.S.C. 403 note) is amended--

13 (a) by striking "dependent" wherever it occurs; and
14 (b) by inserting a period after "section 221(g)" and striking
15 the remainder of the section.

16 SEC. 206. Section 241 (b)(1) of the Central Intelligence Agency
17 Retirement Act of 1964 for Certain Employees, as amended, (78 Stat.
18 1043; 50 U.S.C. 403 note) is amended to read as follows:

19 "(1) To the beneficiary or beneficiaries designated by
20 such participant in a signed and witnessed writing received
21 by the Agency before his death. For this purpose, a

1 designation, change, or cancellation of beneficiary in a will
2 or other document not so executed and filed shall have no
3 force or effect; "

4 SEC. 207. Section 251 of the Central Intelligence Agency
5 Retirement Act of 1964 for Certain Employees, as amended, (78 Stat.
6 1043; 50 U.S.C. 403 note) is amended--

7 (a) by striking "the Federal Employees' Compensation Act of
8 September 7, 1916, as amended (5 U.S.C. 751 et seq.)" and inserting
9 in lieu thereof "chapter 81 of title 5, United States Code or any earlier
10 statute on which such chapter is based"; and

11 (b) by adding at the end thereof the following new sentence:

12 "A participant or former participant who returns to
13 Government duty after a period of separation shall have
14 included in his period of service that part of the period of
15 separation in which he was receiving benefits under chapter
16 81 of title 5, United States Code or any earlier statute on
17 which such chapter is based."

18 SEC. 208. Section 252 of the Central Intelligence Agency
19 Retirement Act of 1964 for Certain Employees, as amended, (78 Stat.
20 1043; 50 U.S.C. 403 note) is amended by striking the period at the
21 end of paragraph (a)(2) thereof and adding the following:

1 "or active and honorable service in the Regular or Reserve
2 Corps of the Public Health Service after June 30, 1960 or as a
3 commissioned officer of the National Oceanic and Atmospheric
4 Administration after June 30, 1961."

5 SEC. 209. The Central Intelligence Agency Retirement Act of
6 1964 for Certain Employees, as amended, (78 Stat. 1043; 50 U.S.C.
7 403 note) is amended by adding in "Part G--Moneys" thereof the
8 following new section 264:

9 "RECOVERY OF PAYMENTS

10 "SEC. 264. Recovery of payments under this Act may
11 not be made from an individual when in the judgment of the
12 Director, the individual is without fault and recovery would
13 be against equity and good conscience. Withholding or
14 recovery of money mentioned by this Act on account of a
15 certification or payment made by a former employee of the
16 Central Intelligence Agency in the discharge of his official
17 duties may be made if the Director certifies that the certifi-
18 cation or payment involved fraud on the part of the former
19 employee."

20 SEC. 210. The Central Intelligence Agency Retirement Act of
21 1964 for Certain Employees, as amended, (78 Stat. 1043; 50 U.S.C.

1 403 note) is amended by adding at the end thereof the following
2 new section:

3 "PART K -- CONFORMITY WITH CIVIL SERVICE RETIREMENT
4 SYSTEM

5 "AUTHORITY TO MAINTAIN EXISTING AREAS OF
6 CONFORMITY BETWEEN CIVIL SERVICE AND CENTRAL
7 INTELLIGENCE AGENCY RETIREMENT AND DISABILITY
8 SYSTEMS:

9 "SEC. 292. (a) Whenever the President determines
10 that it would be appropriate for the purpose of maintaining
11 existing conformity between the Civil Service Retirement and
12 Disability System and the Central Intelligence Agency Retirement and Disability System with respect to substantially
13 identical provisions, he may, by Executive order, extend to
14 current or former participants in the Central Intelligence
15 Agency Retirement and Disability System, or to their
16 survivors, a provision of law enacted after January 1, 1975
17 which:

18
19 "(1) amends subchapter III, chapter 83, title 5,
20 United States Code, and is applicable to Civil Service
21 employees generally, or

1 "(2) otherwise affects current or former partici-
2 pants in the Civil Service Retirement and Disability
3 System, or their survivors.

4 Any such order shall extend such provision of law so
5 that it applies in like manner with respect to such Central
6 Intelligence Agency Retirement and Disability System partici-
7 pants, former participants or survivors. Any such order shall
8 have the force and effect of law and may be given retroactive
9 effect to a date not earlier than the effective date of the
10 corresponding provision of law applicable to employees under
11 the Civil Service retirement system.

12 "(b) Any provisions of an Executive order issued
13 pursuant to this section shall modify, supersede, or render
14 inapplicable, as the case may be, to the extent inconsistent
15 therewith--

16 "(1) all provisions of law enacted prior to the
17 effective date of the provision of such Executive order,
18 and

19 "(2) any prior provision of an Executive order
20 issued under authority of this section."

21 SEC. 211. (a) An annuity payable from the Central Intelligence

1 Agency Retirement and Disability Fund to an annuitant which is based
2 on a separation occurring prior to October 20, 1969, is increased by
3 \$240 per annum.

4 (b) In lieu of any increase based on an increase under sub-
5 section (a) of this section, an annuity payable from the Central
6 Intelligence Agency Retirement and Disability Fund to the surviving
7 spouse of an annuitant, which is based on a separation occurring
8 prior to October 20, 1969, shall be increased by \$132 per annum.

9 (c) The monthly rate of an annuity resulting from an increase
10 under this section shall be considered as the monthly rate of annuity
11 payable under Section 221(a) of the Central Intelligence Agency
12 Retirement Act of 1964 for Certain Employees, as amended, (78 Stat.
13 1043; 50 U.S.C. 403 note) for purposes of computing the minimum
14 annuity under new Section 221(1) of the Act, as added by Section 204
15 of this Act.

16 SEC. 212. (a) This Act shall become effective on the date of
17 enactment.

18 (b) The amendments made by sections 201 (a), (b), (c), and
19 (d), 202, and 205 shall not apply in the case of participants who died
20 before January 8, 1971. The amendments made by section 201 (e) shall
21 not apply in the case of participants who died before April 9, 1974.

1 The rights of such persons and their survivors shall continue in
2 the same manner and to the same extent as if such amendments had
3 not been enacted.

4 (c) The amendment made by section 203 shall apply to a parti-
5 cipant who married prior to enactment but only if the election is made
6 within one year after enactment.

7 (d) The amendment made by section 207 is effective only with
8 respect to annuity accruing for full months beginning after January 8,
9 1971; but any part of a period of separation referred to in such amend-
10 ment in which the participant or former participant was receiving
11 benefits under chapter 81 of title 5, United States Code, or any earlier
12 statute on which such chapter is based shall be counted whether the
13 person returns to duty before, on, or after January 8, 1971. With
14 respect to any person retired before such date of enactment, any such
15 part of a period of separation shall be counted only upon application
16 of the retired person.

17 (e) The amendment in Section 208 to credit certain service in
18 the Public Health Service is effective as of April 8, 1960 and the
19 amendment to credit certain service in the National Oceanic and Atmos-
20 pheric Administration is effective as of September 14, 1961.

21 (f) The amendment in Section 209 is effective as of June 30, 1974.

1 (g) The amendment to recompute a reduced annuity during
2 periods when not married in section 202 shall apply to annuities
3 which commence before, on, or after the date of enactment of this
4 Act, but no increase in annuity shall be paid for any period prior to
5 November 1, 1974.

6 (h) Annuity increases under sections 204 and 211 shall apply
7 to annuities which commence before, on, or after the date of enact-
8 ment of this Act, but no increase in annuity shall be paid for any
9 period prior to August 1, 1974, or the date on which the annuity
10 commences, whichever is later.

SECTIONAL ANALYSIS AND EXPLANATION

TITLE I--FINANCING

Section 101 amends section 111 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, to add three definitions concerning the funding of the System:

"Fund balance" is defined as the par value of securities in which retirement money is invested plus the uninvested cash remaining in the Retirement Fund.

"Unfunded liability" is defined as the estimated amount needed to finance all benefits payable from the Fund less the money now in the Fund and to be placed in the Fund in the future.

"Normal cost" is defined as the level percentage of payroll required to meet the cost of benefits payable under the System, less the expenses attributable to service performed under another retirement system.

The preceding definitions are necessary for implementing subsequent provisions of the bill; definitions comparable to the first two were adopted by the Civil Service Retirement System under section 101(3) of Public Law 91-93; the normal cost definition is similar to that proposed for the Foreign Service system.

Section 102 amends section 261 of the Act to add three new paragraphs concerning the funding of the System:

New paragraph (b) authorizes appropriations to the Fund in equal annual installments over a 30-year period to finance any newly created unfunded liability incurred by the enactment of future legislation, or the exercise of authority based on statute, including benefit improvements for active employees, extension of coverage to new groups of employees, general salary increases, and any new statutory annuity increases (other than automatic cost-of-living adjustments). Interest would be required to be included in these amortized payments at the rate used in the then most recent valuation of the system.

New paragraph (c) provides for direct appropriations, under permanent indefinite authority, to be made to meet that portion of the normal cost of the System which is not being currently defrayed by contributions. This paragraph would direct the Secretary of Treasury to report to the President and to the Congress, the sums credited to the Retirement Fund under this section.

New paragraph (d) provides for direct appropriations, under permanent indefinite authority, to be made to meet the Government's obligations for: (1) the present unfunded liability which arises from legislation already enacted, authority based on statute already exercised plus any that may arise as a result of Title II of this bill, and (2) the cost of military service credit. New paragraph (d) would direct the Secretary of Treasury to pay into the Fund each year: (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and (2) that portion of disbursement for annuities for that year which the Director estimates is attributable to credit allowed for military service. Payments under this paragraph would commence on June 30, 1976, at 60 percent of the prescribed amount. An additional 10 percent would be paid in each subsequent year until, in 1980 and in each subsequent year, 100 percent of the prescribed amount would be paid. The Director would be required to report to the President and to the Congress the sums credited under this procedure.

Provisions identical to new paragraphs (b) and (d), except for appropriate updating, were adopted for the Civil Service by sections 103(a) (2) and 103(b) of Public Law 91-93 and for the Foreign Service by sections 104(a) and 104(b) of Public Law 91-201. A provision similar to new paragraph (c) has been proposed for the Foreign Service system.

TITLE II--RETIREMENT ACT AMENDMENTS

Section 201 removes dependency requirements from the definition of the term "widower" and thereby conforms the Act to the requirement of Public Law 92-187 concerning equality of benefits for married women Federal employees. As a result, widowers of female participants or retirees will be accorded the same benefits as widows of deceased male participants or retirees. Section 201 also changes the definition of child to include an adopted child who is under a petition for adoption at the time of the participant's death and makes such child eligible for survivorship benefits if the surviving spouse proceeds with the adoption. Section 201 further changes the definition of "widow" and "widower" to reduce from two years to one year the marriage

requirement to be entitled to a survivor annuity and thereby conform the Act to Public Law 93-260.

Section 202 does five things:

First, it amends the current provision for annuity for surviving spouse to whom the retiree was married at the time of retirement by authorizing payment of that annuity to a subsequent spouse. The spouse acquired after retirement must qualify as a widow or widower as those terms are defined in section 204 of the Act as amended by section 201 of the bill.

Second, it authorizes a survivor annuity for a widow or widower of a retiree who was unmarried at the time of retirement, subject to the election of a reduced annuity for this purpose by the retiree pursuant to section 203 of the bill.

Third, it requires the surviving spouse, widow, or widower to elect between the benefits afforded under section 202 of the bill and any other entitlements to survivor benefits from a retirement system for Government employees.

Fourth, it provides for the commencement and termination date for the survivor annuities provided under section 202 of the bill.

Finally, it provides that annuities reduced to provide for a surviving spouse shall for each full month during which an annuitant is not married, be recomputed and paid as if the annuity had not been reduced. Upon remarriage, the annuity would be reduced by the same percentage as in effect at the time of retirement. All annuities are covered except no increase in annuity may be made for any period prior to November 1, 1974. This conforms the Act to Public Law 93-474, which became effective October 26, 1974.

Section 203 provides a retiree who is unmarried at the time of retirement with an irrevocable election to select a reduced annuity and provide, under section 202 of the bill, survivorship protection for a spouse acquired after retirement. The election must be received within one year after the marriage and voids any election made at the time of retirement for a survivor annuity for an individual with an insurable interest as authorized under current law (section 221 of the Act). The retiree's annuity is paid at the reduced rate starting with the first day of the month following receipt of the election.

Section 204 imposes a minimum retirement annuity based upon the Social Security minimum primary insurance amount and conforms the Act to the requirements of Public Law 93-273, which increased certain annuities and was signed into law April 26, 1974. The annuitant's monthly benefit would not be increased to such minimum if the individual receives any other periodic payment from the United States Government of a similar nature, including, but not limited to, social security, annuity, other civilian or military retired pay, pension, or veterans compensation, and the monthly rate of such periodic payment equals or exceeds the smallest primary insurance amount which may be in effect from time to time.

Section 205 changes the "Death in Service" provisions of the Act (section 232) to remove the dependency requirements currently attached to the payment of a survivor annuity to a widower of a female participant who dies in service. The changes are compatible with the changes made in the definition of the term "widower" under section 201 of the bill.

Section 206 amends Section 241 of the Act with regard to filing designation of beneficiary for the payment of contributions and interest in excess of benefits received to survivors of participants under the Act. The amendment states clearly that the order of preference set out in that section shall prevail over any extraneous document designating a beneficiary unless the designation has been received by the Director. This conforms the Act to a similar provision in the Civil Service Retirement system under Public Law 89-373 approved March 23, 1966. The provision was sought by the Civil Service Commission to make clear that the statutory order of precedence prevails and avoid the problems of conflicting case law and resultant serious delays in paying insurance claims to survivors. Adoption of the provision by the Central Intelligence Agency Retirement Act will avoid these same problems.

Section 207 updates the citation in Section 251 of the Act. Section 207 also provides retirement service credit for periods of separation from Federal Government employment covered by employees' compensation for work injuries under 5 U.S.C. 8101 et seq.

Section 208 amends Section 252 of the Act to credit service in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or as a commissioned officer in the Coast and Geodetic Survey after June 30, 1961. This conforms the Act to Public Law 86-415, approved April 8, 1960, which credits, as military service under the Civil Service Retirement Act, certain prior service in the Regular or Reserve Corps of the Public Health

Service after June 30, 1960, and conforms the Act to Public Law 87-233, approved September 14, 1961, which similarly credits under the Civil Service system service as a commissioned officer in the Coast and Geodetic Survey (now functionally within the National Oceanic and Atmospheric Administration).

Section 209 adds a new section to "PART G--MONEYS" to grant the Director the authority to waive recovery of payments from a recipient made under the Act if in the judgment of the Director the individual is without fault and recovery would be against equity and good conscience. This section also allows the Director to withhold or recover moneys mentioned under the Act from a former employee of the Agency where there is a finding and certification by the Director that the former employee exercised fraud. This section conforms the Act to a similar provision in the Civil Service retirement system (section 8346 of Title 5, U.S.C., Public Law 89-554), which became effective September 6, 1966. The necessity for this provision was highlighted as the result of the recent overpayment in cost-of-living increases for all Government retirement systems based on a miscalculation of the data utilized. This section would be made effective sufficiently retroactive to allow the Director to waive the overpayment to annuitants under the Agency's retirement system as was done by the Civil Service Commission in December 1974 for Civil Service retirees.

Section 210 adds a new "PART K--CONFORMITY WITH CIVIL SERVICE RETIREMENT SYSTEM" to the Act to authorize administrative changes in Central Intelligence Agency retirement provisions to maintain existing conformity between the Civil Service and Central Intelligence Agency retirement systems. Under this amendment, whenever a law enacted after January 1, 1975 amends a provision of the Civil Service retirement system or otherwise changes retirement benefits for employees or annuitants under that system which prior thereto had been substantially identical to a corresponding provision of law governing benefits payable under the Central Intelligence Agency retirement system, the President, if he determines it appropriate to maintain the previous conformity between the two systems could issue an order to apply the new Civil Service provision or benefit to the Central Intelligence Agency. This could be done retroactively in the interest of equity where necessary.

In addition to the applicability of this proposal to amendments of Civil Service retirement provisions that were substantially identical to corresponding Central Intelligence Agency retirement provisions immediately prior to enactment of the Civil Service amendment, it is intended that the proposal apply to amendments of Civil Service provisions enacted after January 1, 1975 but before enactment of this bill which were substantially identical either to corresponding Central Intelligence Agency retirement

provisions when this bill is introduced or to Central Intelligence Agency retirement provisions as proposed in this bill.

Authority would not be available under the proposal to change a Central Intelligence Agency retirement provision that had not been substantially identical to the Civil Service provision prior to the latter's amendment. For example, if the present regular Civil Service multiplication factor, which is less than 2% for the first ten years of service, were increased, a corresponding increase could not be extended to the Central Intelligence Agency retirement system under this authority because the Central Intelligence Agency retirement system multiplication factor is 2% for all years of service. Neither could a change affecting only a special group, such as the change in the law-enforcement employee multiplication factor made by P.L. 93-350, be extended to the Central Intelligence Agency retirement system under this authority because this proposal would be applicable only to amendments of Civil Service retirement provisions applicable generally.

Section 210 is based upon a similar proposal in S. 1943, which amends the Foreign Service Retirement Act and was submitted to the 94th Congress. This authority would save appreciable man-hours within the Executive branch and the Congress now expended to process legislation to adopt separately for the Agency retirement system each applicable change in the Civil Service system. The change does not in any way abridge the right of Congress to enact future laws changing the Central Intelligence Agency retirement system provisions or benefits.

Section 211 increases annuities that occurred prior to October 20, 1969, and further conforms the Act to the requirements of Public Law 93-273, which authorized payment effective August 1, 1974. Retirees under the Act (and Civil Service retirees) prior to October 20, 1969, did not receive the liberalization in retirement computation made under Public Law 91-185, effective December 30, 1969. Under Public Law 91-185 the computation of annuities was changed from a high -5 years average salary to a high -3 years average salary and unused sick leave was counted as service for annuity computation purposes.

Section 212 provides effective dates in phase with those established for the Civil Service Retirement System in connection with identical changes. These dates assure that the treatment afforded retirees and their survivors under the CIA Retirement Act will not be different than that afforded retirees and their survivors under the Civil Service Retirement System.

CHANGES IN EXISTING LAW

Changes in existing law made by the draft bill are shown as follows: existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in brackets; new matter is under-scored.

CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT OF 1964 FOR CERTAIN EMPLOYEES, as amended (78 Stat. 1043; 50 U.S.C.A. 403 Note)

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TITLE I--TITLE AND DEFINITIONS

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PART B--DEFINITIONS

SEC. 111. When used in this Act, the term--

(1) "Agency" means the Central Intelligence Agency;

(2) "Director" means the Director of Central Intelligence;
[[and]]

(3) "Qualifying service" means service performed as a participant in the system or, in the case of service prior to designation, service determined by the Director to have been performed in carrying out duties described in section 203 [[.]];

(4) "Fund balance" means the sum of--

(a) the investments of the fund calculated at par
value; and

(b) the cash balance of the fund on the books of the
Treasury;

(5) "Unfunded liability" means the estimated excess of the present value of all benefits payable from the fund to participants and former participants, subject to this Act, and to their survivors, over the sum of--

(a) the present value of deductions to be withheld from the future basic salary of participants currently subject to this Act and of future Agency contributions to be made in their behalf; plus

(b) the present value of Government payments to the fund under section 261 (b) and (c) of this Act; plus

(c) the fund balance as of the date the unfunded liability is determined; and

(6) "Normal cost" means the level percentage of payroll required to be deposited in the fund to meet the cost of benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military service.

TITLE II--THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

PART A--ESTABLISHMENT OF SYSTEM Rules and Regulations

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Annuitants

SEC. 204. (a) Annuitants shall be participants who are receiving annuities from the fund and all persons, including surviving wives and husbands, widows, [[dependent]] widowers, children, and beneficiaries participants or annuitants who shall become entitled to receive annuities in accordance with the provisions of this Act.

(b) When used in this Act the term--

(1) "Widow" means the surviving wife of a participant who was married to such participant for at least [[two years]] one year immediately preceding his death or is the mother of issue by marriage to the participant.

(2) [["Dependent widower"]] "Widower" means the surviving husband of a participant who was married to such participant for at least [[two years]] one year immediately preceding her death or is the father of issue by marriage to the participant. [[, and who is incapable of self-support by reason of mental or physical disability, and who received more than one-half of his support from such participant.]]

(3) "Child," for the purposes of sections 221 and 232 of this Act, means an unmarried child, including (i) an adopted child or a child who lived with and for whom a petition for adoption was filed by a participant and who is adopted by the surviving spouse after the participant's death, and (ii) a stepchild or recognized natural child who lived with the participant in a regular parent-child relationship, under the age of eighteen years, or such unmarried child regardless of age who because of physical or mental disability incurred before age eighteen is incapable of self-support, or such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. A child whose twenty-second birthday occurs prior to July 1 or after August 31 of any calendar year, and while he is regularly pursuing such a course of study or training, shall be deemed for the purposes of this paragraph and section 221(e) of this Act to have attained the age of twenty-two on the first day of July following such birthday. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed five months and if he shows to the satisfaction of the Director that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately following the interim. The term "child," for purposes of section 241, shall include an adopted child and a natural child, but shall not include a stepchild.

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PART C--COMPUTATION OF ANNUITIES

SEC. 221.

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(b)(1) If a participant dies after having retired and is survived by a spouse to whom he or she was married at the time of retirement, or by a widow or widower whom he or she married after retirement, the spouse, widow, or widower is entitled to an annuity equal to 55 percent of the amount of the participant's annuity computed as prescribed in paragraph (a) of this section, up to the full amount of such annuity specified by the participant as the base for such survivor benefits at the time of retirement. The annuity of the participant shall be reduced by 2 1/2 per centum of any amount up to \$3,600 specified by the participant as the base for such survivor benefit plus 10 per centum of any amount over \$3,600 so specified.

(2) If an annuitant dies after having elected a reduced annuity provided in paragraph (2) of section 221(f), the surviving widow or widower is entitled to an annuity computed as prescribed in paragraph (1) of this subsection.

(3) A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he or she may be entitled under this or another retirement system for Government employees. The annuity of the spouse, widow or widower under this subsection commences on the day after the annuitant dies. This annuity and the right thereto terminate on the last day of the month before the spouse, widow or widower--

(A) dies; or

(B) remarries before becoming 60 years of age.

(4) An annuity which is reduced under this subsection shall, for each full month during which an annuitant is not married, be recomputed and paid as if the annuity had not been so reduced. Upon remarriage of the annuitant, the annuity shall be reduced by the same percentage reductions which were in effect at the time of retirement.

[[(b) At the time of retirement, any married participant may elect to receive a reduced annuity and to provide for an annuity payable to his wife, or her husband, commencing on the date following such participant's death and terminating upon the death or upon remarriage prior to attaining age sixty of such surviving wife or husband. The annuity payable to the surviving wife or husband after such participant's death shall be 55 per centum of the amount of the participant's annuity computed as prescribed in paragraph (a) of this section, up to the full amount of such annuity specified by him as the base for the survivor benefits. The annuity of the participant making such election shall be reduced by 2 1/2 per centum of any amount up to \$3,600 he specified as the base for the survivor benefit plus 10 per centum of any amount over \$3,600 so specified.]]

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(f)(1) Any unmarried participant retiring under the provisions of this Act and found by the Director to be in good health may at the time of retirement elect a reduced annuity, in lieu of the annuity as hereinbefore provided, and designate in writing a person having an insurable interest (as that term is used in section 9(h) of the Civil Service Retirement Act (5 U.S.C. 2259(h))) in the participant to receive an annuity after the participant's death. The annuity payable to the participant making such election shall be reduced by 10 per centum of an annuity computed as provided in paragraph (a) of this section, and by 5 per centum of an annuity so computed for each full five years the person designated is younger than the participant, but such total reduction shall not exceed 40 per centum. The annuity of a survivor designated under this paragraph shall be 55 per centum of the reduced annuity computed as prescribed above.

(2) A participant, who is unmarried at the time of retiring and who later marries, may irrevocably elect, in a signed writing received in the Agency within one year after the marriage, a reduced annuity as provided in section 221(b). The reduced annuity is effective the first day of the month after the election is received. The election voids prospectively any election previously made under the provisions of paragraph (1) of this subsection.

* * * * *

(1)(1) Notwithstanding any other provision of this section, the monthly rate of annuity payable under subsection (a) of this section, shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act.

(2) Notwithstanding any other provision of this section, other than this subsection, the monthly rate of annuity payable under subsection (a) of this section to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act, or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) The provisions of this subsection shall not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act, a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof, is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act.

PART D--BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

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Death in Service

SEC. 232.

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(b) If a participant, who has at least eighteen months of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a)(2), dies before separation or retirement from the Agency and is survived by a widow or a [[dependent]] widower, as defined in section 204, such widow or [[dependent]] widower shall be entitled to an annuity equal to 55 per centum of the annuity computed in accordance with the provisions of section 221(a), except that the computation of the annuity of the participant under such section shall be at least the smaller of (i) 40 per centum of the participant's average basic salary, or (ii) the

sum obtained under such section after increasing the participant's service of the type last performed by the difference between his age at the time of death and age sixty. The annuity of such widow or [[dependent]] widower shall commence on the date following death of the participant and shall terminate upon death or upon remarriage prior to attaining age sixty of the widow or [[dependent]] widower (subject to the payment and restoration provisions of section 221(g)). [[, or upon the dependent widower's becoming capable of self-support.]]

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... PART E--DISPOSITION OF CONTRIBUTIONS
AND INTERESTS IN EXCESS OF BENEFITS RECEIVED

SEC. 241.

(1) To the beneficiary or beneficiaries designated by such participant in [[writing to the Director]] a signed and witnessed writing received by the Agency before his death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed shall have no force or effect;

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PART F--PERIOD OF SERVICE FOR ANNUITIES
COMPUTATION OF LENGTH OF SERVICE

SEC. 251. For the purposes of this Act, the period of service of a participant shall be computed from the date he becomes a participant under the provisions of this Act, but all periods of separation from the Agency and so much of any leaves of absence without pay as may exceed six months in the aggregate in any calendar year shall be excluded, except leaves of absence while receiving benefits under [[the Federal Employees' Compensation Act of September 7, 1916, as amended (5 U.S.C. 751 et seq.)]] chapter 81 of title 5, United States Code or any earlier statute on which such chapter is based, and leaves of absence granted participants while performing active and honorable military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States. A participant or former participant who returns to Government duty after a period of separation shall have included in his period of service that part of the period of separation in which he was receiving benefits under chapter 81 of title 5, United States Code or any earlier statute on which such chapter is based.

SEC. 252. (a) A participant may, subject to the provisions of this section, include in his period of service--

(2) active and honorable military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States prior to the date of the separation upon which title to annuity is based [.] or active and honorable service in the Regular or Reserve Corps of the Public Health Service after June 30, 1960 or as a commissioned officer of the National Oceanic and Atmospheric Administration after June 30, 1961.

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PART G--MONEYS
ESTIMATE OF APPROPRIATIONS NEEDED

SEC. 261. (a) The Director shall prepare the estimates of the annual appropriations required to be made to the fund, and shall cause to be made actuarial valuations of the fund at intervals of five years, or oftener if deemed necessary by him.

(b) Any statute which authorizes--

(1) new or liberalized benefits payable from the fund, including annuity increases other than under section 291 of this Act;

(2) extension of the coverage of this Act to new groups of employees; or

(3) increases in salary on which benefits are computed is deemed to authorize appropriations to the fund to finance the unfunded liability created by that statute in thirty equal annual installments with interest computed at the rate used in the then most recent valuation of the System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of coverage, or increase in salary is effective.

(c) At the end of each fiscal year, effective with Fiscal Year 1976, the Director shall notify the Secretary of the Treasury of the amount of the normal cost for that year which was not met by contributions under section 211(a). Before closing the accounts for that year, the Secretary of the Treasury shall credit such amount to the fund as a Government contribution out of any money in the Treasury of the United States not otherwise appropriated. The Secretary shall report to the President and to the Congress the sums credited to the fund under this section.

(d) At the end of each fiscal year, the Director shall notify the Secretary of the Treasury of the amount equivalent to (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and (2) that portion of disbursement for annuities for that year which the Director estimates is attributable to credit allowed for military service. Before closing the accounts for each fiscal year, the Secretary shall credit to the fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the following percentages of such amounts: 60 percent for 1976; 70 percent for 1977; 80 percent for 1978; 90 percent for 1979; and 100 percent for 1980 and for each fiscal year thereafter.

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RECOVERY OF PAYMENTS

SEC. 264. Recovery of payments under this Act may not be made from an individual when in the judgment of the Director, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money mentioned by this Act on account of a certification or payment made by a former employee of the Central Intelligence Agency in the discharge of his official duties may be made if the Director certifies that the certification or payment involved fraud on the part of the former employee.

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PART K--CONFORMITY WITH CIVIL SERVICE RETIREMENT SYSTEM

AUTHORITY TO MAINTAIN EXISTING AREAS OF CONFORMITY BETWEEN CIVIL SERVICE AND CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEMS:

SEC. 292. (a) Whenever the President determines that it would be appropriate for the purpose of maintaining existing conformity between the Civil Service Retirement and Disability System and the Central Intelligence Agency Retirement and Disability System with respect to substantially identical provisions, he may, by Executive order, extend to current or former participants in the Central Intelligence Agency Retirement and Disability System, or to their survivors, a provision of law enacted after January 1, 1975 which:

(1) amends subchapter III, chapter 83, title 5, United States Code, and is applicable to Civil Service employees generally, or

(2) otherwise affects current or former participants in the Civil Service Retirement and Disability System, or their survivors.

(b) Any provisions of an Executive order issued pursuant to this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith--

(1) all provisions of law enacted prior to the effective date of the provision of such Executive order, and

(2) any prior provision of an Executive order issued under authority of this section.

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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

NOV 3 1975

Honorable William E. Colby
Director
Central Intelligence Agency
Washington, D.C. 20505

Attention: Mr. George L. Cary
Legislative Counsel

Dear Mr. Colby:

This is in reply to Mr. Cary's request for advice on a draft bill, "To amend the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, and for other purposes," which the Agency desires to submit to Congress.

The purpose of the bill is to provide full funding and financing for the Central Intelligence Agency Retirement system to parallel provisions contained in the Civil Service Retirement law, and those enacted and proposed for the Foreign Service retirement system.

The bill would also provide numerous "catch-up" benefits as well as certain technical changes to conform the CIA retirement system with new features enacted in recent years for the civil service system.

In the course of informal discussions with [redacted] of your staff, it was agreed that certain changes would be made in the draft bill and accompanying papers to conform the provision for future changes in the system with an identical provision of S. 1943, 94th Congress, the pending Foreign Service Retirement Act amendments. As so modified, that provision of the bill would provide for future administrative adjustments in the CIA retirement system to be

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made by the President. The President would effect conforming changes in the CIA system after enactment of new or improved civil service retirement benefits, in those instances where the two systems have substantially identical provisions and application of the civil service provisions would be appropriate.

There is no objection from the standpoint of the Administration's program to submission of the draft bill to Congress, modified as indicated above.

Sincerely,

(Signed) James M. Frey

James M. Frey
Assistant Director for
Legislative Reference